

Proposed Decision of SB 863 Appeals Hearing Panel to BSCC

Summary

The SB 863 Appeals Hearing Panel recommends that the Board of State and Community Corrections deny the appeal from San Joaquin County. On a 3-0 vote at a hearing on January 22, 2016, the panel determined that San Joaquin County did not provide the requested information regarding the number of pre-trial offenders housed in the County's local jail between January 1, 2013 to December 31, 2013. Further information about the panel's decision appears below.

Background

On December 10, 2015, the County of San Joaquin appealed the BSCC's November 12, 2015 decision on the SB 863 Construction Financing program pursuant to BSCC Regulation 1788. The appeal was based on the County's contention that its proposal contained the requisite information regarding the number of pre-trial offenders housed in its jail during calendar year 2013. The county argued that the Executive Steering Committee (ESC) should have awarded the county the full points as the information was included in section 4, in the fact sheet. San Joaquin County stated the following as the issue on appeal:

Specifically, San Joaquin County requests an appeal hearing regarding the Executive Steering Committee's (ESC) decision to deny the San Joaquin County full scoring points in Section 3A of its proposal, Documentation of Pre-trial Offender Percentage. The decision was based on the ESC's assertion that the County did not provide the requested percentage of pretrial offenders, thus denying the County the certification that it had complied with Section 4: Fact Sheet #7, and Section 5: Narrative, #3A. San Joaquin County requests that the BSCC reassess the County's scores associated to Section 3A, Documented Percentage of Pretrial Offenders. The Documentation of Pretrial Offender Percentage was included in the Fact Sheet of the application in Section 4, Table 1, Line 7, as required in the instructions. Finally, San Joaquin County requests that if the appeal is granted and full points for Section 3A are awarded, that the County's score be recalculated and the County be given a new ranking.

Additionally, the County asserted that one of the ESC raters influenced the process with respect to this item:

Originally, six out of nine raters awarded the County the points for [criterion 3A]. However, during the review of proposals at the BSCC meeting on November 12 (sic), 2015, one of the raters noted that the information was not listed in Section 5: Narrative #3, and further thought he should not have had to refer back and forth in the proposal to find this information. He influenced other raters who originally awarded the County points for this criterion to change their scores, and the County did not receive points for that mandatory factor.

The County additionally argued that the RFP was vague as to whether providing the information in a separate section from the place where it was required was enough to satisfy the requirement:

As stated in the BSCC SB 863 Proposal form Section 4: Fact Sheet, “To capture key information from Section 5: Narrative, applications **must** complete this Fact Sheet. Minimal information is requested. Narrative information or explanations are not to be included on this Fact Sheet nor as part of the tables in this section. Explanations of what is provided in these tables **may** be included in the Narrative section of the Proposal Form. Proposal narratives **may** include reference back to one or more of these specific tables. . .”

Based on the BSCC’s aforementioned language in its proposal form, the County is confident that it provided the requisite data and documented the data in Section 4 Fact Sheet, Table 1, Line 7, and was not required to restate the information in Section 5: Narrative #3.

The County’s appeal further states that the BSCC’s technical review process did not identify the documentation of pretrial offenders as an area within the proposal that needed further correction or clarification. The County stated that it received comments back on its proposal, corrected three minor errors, and resubmitted its proposal but that the technical review process did not identify any other areas that needed additional correction or clarification.

San Joaquin County sought two remedies:

1. BSCC’s reassessment of the County’s proposal and the granting of the full points allowable in Section 3A.
2. To have its score recalculated and its final ranking reestablished in the large-sized county category.

Analysis

The Request for Proposals asked county applicants to provide information on the number of pre-trial offenders housed in their local jails during a specific period of time, January 1, 2013 to December 31, 2013. This was a requirement spelled out in the SB 863 Legislation.

Section 5, Question 3 Special Factors A asks raters to determine whether:

The county provided documentation that states the percentage of its inmates on pretrial status between January 1, 2013 and December 31, 2013. [From Senate Bill 863 Adult Local Criminal Justice Facilities Construction REQUEST FOR PROPOSALS APPLICATION PACKET Released June 10, 2015]

Of the 32 counties that applied for SB 863 lease-revenue bond financing, 28 proposals contained this required information where it was specified in the RFP to be located: in the narrative of Section 5, Question 3 Special Factors A. These 28 counties also specified in the narrative that the

pretrial status numbers were collected from the required time period. The appeals hearing panel was provided with excerpts from other county's proposals where the information was specified in Section 5, the narrative, as well as San Joaquin County's entire proposal for comparison.

In San Joaquin County's application, the percentage of "non-sentenced" inmates was included in a different section that asked for general non-time-specific information about the county jail system. That section (section 4) did not ask for time-specific data and included entries such as the county's general population, the number of detention facilities in the county, and the average daily population (see below). San Joaquin County did not include the time frame of any of the data it reported in either Section 4 or Section 5.

Table 1: Provide the following information		
1.	County general population	
2.	Number of detention facilities	
3.	BSCC-rated capacity of jail system (multiple facilities)	
4.	ADP (Secure Detention) of system	
5.	ADP (Alternatives to Detention) of system	
6.	Percentage felony inmates of system	
7.	Percentage non-sentenced inmates of system	
8.	Arrests per month	
9.	Bookings per month of system	
10.	"Lack of Space" releases per month	

Nowhere in its application, including where it was required in the narrative in Section 5, did San Joaquin County provide documentation on the numbers of pretrial inmates in its jails between January 1, 2013 and December 31, 2013.

While six of the ESC raters originally awarded San Joaquin County points, three did not. At the November 2, 2015 Raters' Discussion, there was a discussion among ESC members about the differences in scores on this mandatory criterion. The ESC members unanimously decided that in order to receive the four weighted points for this criterion, the county must have been specific in answering the requirement of the Legislation that required pretrial inmate numbers for a specific point in time. Members felt if the date was not attached, the percentage of pretrial inmates could have reflected populations from an erroneous point in time.

ESC members were consistent in their rating on this point. Three other counties –Monterey, Plumas, and Del Norte – also lost points for failing to provide the specific information that was required for the period between January 1, 2013 and December 31, 2013.

In addition, San Joaquin County is alleging that the County's omission should have been identified during the technical review process and stated as follows in its appeal:

In an email received from Amanda Buentipo on September 4, 2015, she advised that the technical review portion of San Joaquin County's proposal was complete and identified three minor areas that required correction or clarification on behalf of the County.

These items were immediately resolved, and the proposal was resubmitted. The technical review process did not identify the documentation of pretrial offenders as an area within the proposal that needed further correction or clarification.

The scope of the technical review was detailed on pages 12-13 of the RFP. The technical review staff checked technical details of the application such as line item budget descriptions, font size, Board of Supervisors' resolutions, and minimum match requirements. It did not include review of the detailed content of individual county responses that raters would be weighing.

The email sent to counties during the technical review process included this caveat:

Please note: the purpose of the BSCC staff technical review is to assist the county in submitting a proposal that meets the technical requirements of the competitive process. The Executive Steering Committee is fully responsible for rating and scoring the proposals.

The submitted Fact Sheet provided general information about the County. Question 3 in Section 5 (and the Legislation) specifically asked that the numbers of pretrial inmates housed during a specific time period be included in that section.

In addition, the "pretrial" number specifically required by the Legislation refers to inmates awaiting trial. The "non-sentenced" number the County provided can include both inmates awaiting trial and those who have been tried and are awaiting sentencing.

Appeal Hearings Panel Consideration of Appeal

While Regulation 1792 specifies that the appeal hearing must occur within 30 days of the appeal, BSCC staff requested that the appeal hearing be held later in January due to the holidays. The County agreed to the time extension, and the appeals hearing panel convened on January 22, 2016 to hear and consider the appeal of San Joaquin County. The appeal hearing panel members were Chief Michelle Brown, Chief Probation Officer of San Bernardino County, County Supervisor Leticia Perez from Kern County, and Chief David Bejarano, Chief of Police of Chula Vista. Chief Brown acted as the presiding officer for the proceedings.

Sheriff Steve Moore appeared at the appeals hearing on behalf of San Joaquin County. Sheriff Moore was provided with an opportunity to explain to the appeals panel the basis of the county's appeal. Sheriff Moore informed the panel, among other things, that the County understood the requirements of the RFP and believed that because the RFP was limited in scope to the 2013 calendar year, it should have been clear that the data provided in the County's proposed was for calendar year 2013.

Statement of Decision

On a 3-0 vote, the appeals hearing panel recommends to the BSCC that the appeal from San Joaquin County be denied. The panel believes that the RFP instructions were sufficiently clear about the necessary 2013 pretrial offender information that was required to receive credit.

Recommendation

The appeals hearing panel recommends that the Board of State and Community Corrections deny the appeal of San Joaquin County for the reasons stated above.